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No. 370

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Petitioner,

v.

DANIEL T. JACKSON, *Respondent.*

REPLY BRIEF OF PETITIONER

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With regard to questions of law presented by this case, petitioner will rely on its position as stated in the petition.

This reply is directed solely to a serious misstatement of fact, variations of which are repeated throughout respondent's brief in opposition. Apparently, respondent is attempting to suggest that the use of motor track cars to haul push trucks is unnecessary, unusual, and unknown to the Interstate Commerce Commission. For example, at page 5 of the brief in opposition respondent states:

> *"So far as this record discloses, such a use has never been made of these vehicles before."*

This statement, previously raised by respondent in the Court of Appeals and refuted there, is patently untrue.

The following are some excerpts from the record of testimony printed in the Joint Appendix in the Court of Appeals and submitted to this Court with the petition. The witness is respondent himself.

Record at p. 41:

> "Q. Now you testified you sometimes pulled that push truck with the motor car; is that right?"
>
> "A. That is right."

Record at p. 43:

> "Q. Wasn't anything unusual about operating a motor car and push truck on a rainy day; was it?"
>
> "A. No, sir."
>
> * * *
>
> "Q. That was just a standard procedure? That was the usual way you worked; isn't that right?"
>
> "A. The way I usually worked?"
>
> "Q. Yes."
>
> "A. Yes, sir."

Record at p. 48:

> "Q. And you didn't need that push truck on the way home; did you?"
>
> "A. Well always—when you take it out, you always take it back to the tool house."
>
> "Q. Well, don't you sometimes leave the push truck by the tracks overnight and you lock it up?"
>
> "A. Very seldom unless we are raising track."

Petitioner's Exhibit 13, showing a motor track car with push truck attached, was introduced into evidence

by petitioner in the trial court, forwarded with the record to the Court of Appeals, expressly designated a part of the record sent to this Court, and reproduced by petitioner and included at p. 17 of the appendix to the petition submitted here. This exhibit shows the normal use of these vehicles, a common sight to anyone who has even seen men working on the railroad.

The following stipulation, signed by counsel for both respondent and petitioner, appears at p. 78 of the Record:

> "9. That hand cars customarily used in the railroad industry in Maintenance of Way departments are equipped with four wheels; two axles; wooden frames; are *capable of being towed behind railroad motor track cars* and are not equipped with any kind of brakes." (Emphasis supplied)

If a track maintenance crew uses a motor track car to reach its place of work, it is nonsense to suggest, as does respondent, that a push truck "capable of being towed behind" a motor track car reaches the place of work in any other way.

Respectfully submitted,

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October 9, 1956